

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

8 STEPHANIE RIDGWAY, ) 3:15-cv-00002-HDM-WGC  
9 Plaintiff, )  
10 vs. ) ORDER  
11 SUN VALLEY GENERAL IMPROVEMENT )  
DISTRICT, )  
12 Defendant. )  
13 )

14 On March 8, 2017, a jury found for the defendant and against the  
15 plaintiff in this action. Plaintiff Stephanie Ridgway filed a motion  
16 for a new trial. (ECF No. 54). Defendant Sun Valley General  
17 Improvement District filed an opposition (ECF No. 57) and plaintiff  
18 replied (ECF No. 58).

19           Federal Rule of Civil Procedure 59 permits a court to grant a new  
20 trial "for any reason for which a new trial has heretofore been  
21 granted in an action at law in federal court." Fed. R. Civ. P.  
22 59(a)(1)(A). To obtain a new trial based on erroneous evidentiary  
23 rulings, the moving party must show that the rulings were both  
24 erroneous and substantially prejudicial. See *Ruvalcaba v. City of Los*  
25 *Angeles*, 64 F.3d 1323, 1328 (9th Cir. 1995).

26 The plaintiff has failed to show that the court's evidentiary  
27 ruling regarding the alleged statement of the lifeguard was either  
28 erroneous or substantially prejudicial.

In her motion, the plaintiff argues for the first time that the alleged statement that she shouldn't "feel bad [because] . . . [t]his has happened before" or "that's not the first time that somebody's gotten hurt" was not hearsay. The court concludes that it was not plain error to hold that these statements from an unnamed and unidentified lifeguard constituted hearsay testimony.

7       Second, neither the plaintiff nor her witnesses were able to  
8 identify the person or persons who allegedly made this statement. In  
9 fact, the plaintiff said she believed it was not the lifeguard sitting  
10 at the corner of the pool. There was no evidence that the  
11 unidentified lifeguard had been sufficiently startled by the events  
12 to qualify any alleged statement as an excited utterance.

Finally, the lifeguards testified at trial that on other occasions swimmers entered the pool on the slide and struck the bottom of the pool and injured their feet. Therefore, direct evidence of prior injuries was presented to the jury and the ruling of the court precluding, on hearsay grounds, vague testimony by the plaintiff and her witnesses about statements of unnamed lifeguards was not substantially prejudicial to the plaintiff.

20 Any other arguments raised by plaintiff in her motion are without  
21 merit.

22 Therefore, plaintiff's motion for a new trial (ECF No. 54) is  
23 denied.

24 || TT TS SO ORDERED

25 || DATED: This 24th day of May, 2017.

Howard D McRillen

UNITED STATES DISTRICT JUDGE